

## **TITLE 4. DEPARTMENT OF FOOD AND AGRICULTURE**

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department) proposes to amend regulations contained in Title 4, Division 9, Chapter 6, Article 5.

The California Business and Professions Code charges the Department with the responsibility for establishing specifications for spark-ignition engine fuels and compression-ignition engine fuels. It further requires the Department to adopt, by reference, the latest standards established by a recognized consensus organization or standards writing organization such as ASTM International.

The proposed amendments to Article 5 do several things:

- 1.) Amend the reference to the maximum allowable Reid Vapor Pressure limit, to bring it into compliance with current California Air Resources Board requirements. Additionally, it amends and updates the reference to ASTM D 4814 volatility class specifications for distillation temperatures.
- 2.) Adopt ASTM International specification D 5798 for E85 Ethanol Fuel.
- 3.) Adopt ASTM International specification D 5797 for M85 Methanol Fuel.
- 4.) Adopt ASTM International specification D 6751 for Biodiesel blending stock, adopts interim specifications for Biodiesel blended fuels, and adopts interim specifications for 100% Biodiesel fuel.

A public hearing regarding this proposal is not currently scheduled. However, any interested person or duly authorized representative may request, no later than 15 days prior to the close of the written comment period, that a public hearing be scheduled. Following the public hearing, if one is requested, or following the written comment period, if no public hearing is requested, the Department of Food and Agriculture, upon its own motion or at the instance of any interested person, may thereafter adopt the proposal substantially as set forth without further notice.

Notice is also given that any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Food and Agriculture, Division of Measurement Standards, 8500 Fruitridge Road, Sacramento, California 95826. Comments may also be submitted by facsimile (FAX) at (916) 229-3026 or by e-mail at [DMS@cdfa.ca.gov](mailto:DMS@cdfa.ca.gov). Comments must be submitted prior to 5:00 p.m. on August 25, 2003.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Department and the Division of Measurement Standards' Petroleum Products Program are charged with the responsibility to establish specifications for engine fuels sold in California. The Department is required to adopt, by reference, the latest standards of a recognized consensus organization or standards writing organization, such as the American Society for Testing and Materials (ASTM). The Department has adopted ASTM standards for gasoline, diesel fuel, kerosene, and fuel oil.

In the absence of such consensus standards, the Department is still statutorily required to establish specifications for engine fuels. (Bus. & Prof. Code sections 13440 and 13450.) According to the legislative history of 1993 amendments to Business and Professions Code section 13401, "AB 2154 requires the Department of Food and Agriculture to establish specifications for gasoline and other automotive spark-ignition engine fuels, and for compression-ignition engine fuel, kerosene and fuel oil. In adopting these specifications it is the intent of the Department to adopt by reference the latest standards of the American Society for Testing and Materials (ASTM). If there are no ASTM standards for a particular fuel, the Department shall adopt an interim standard established by a recognized consensus organization or standards writing organization. If the ASTM later adopts a standard, it shall be the recognized standard." (Historical and Statutory Notes, West's Annotated California Codes, 2001 Cumulative Pocket Part, Bus. & Prof. Code, sec. 13401.)

A major producer of gasoline in California has protested that the regulation dealing with the 7.8 pounds per square inch Reid Vapor Pressure and ASTM D 4814, volatility class specifications for distillation temperatures is out of date and in need of correction.

The Division of Measurement Standards has also been requested by the Department to adopt a fuel standard for E85 Ethanol Fuel. In their request they indicate that there are nearly 150,000 flexible fueled vehicles operating in California. These vehicles have the option of using ethanol or methanol, agriculture based fuels, as an alternative to petroleum based gasoline. Additionally, the Department is working in a cooperative effort with the National Ethanol Vehicle Coalition to promote several test fueling facilities to promote the use of ethanol fuels.

Finally, the Division of Measurement Standards has been petitioned by the National Biodiesel Board to adopt standards for biodiesel blending stock, biodiesel/petroleum diesel blends and 100% biodiesel fuel. The National Biodiesel Board states that biodiesel is a new and growing fuel in California's marketplace. Also that biodiesel has several positive attributes; it is cleaner burning, it has a higher energy balance, it is a renewable fuel, it has no aromatics

and less than 15 parts per million of sulfur, and provides greater lubricity to the blended fuel.

## **Article 5. Engine Fuel Standards**

### **Section 4140**

This section is amended to specify the current California maximum Reid Vapor Pressure limit must comply with California Air Resources Board limits and reference the current ASTM D 4814 volatility class specifications for distillation temperatures.

### **Section 4145**

This section is added to adopt the latest version of ASTM D 5798, Standard Specification for Fuel Ethanol (Ed75 – Ed85).

### **Section 4146**

This section is added to adopt the latest version of ASTM D5797, Standard Specification for Methanol Fuel (M70 – M85).

### **Section 4147**

This section is added to adopt the latest version of ASTM D 6751, Standard Specification for Biodiesel Fuel Blending Stock; to adopt an interim specification for biodiesel/petroleum diesel blends, and to adopt an interim specification for 100% biodiesel fuel.

### **Section 4148**

This section is added to address the labeling and price advertising requirements for 100% biodiesel fuel.

### **Section 4149**

This section is added to address the labeling and price advertising requirements for biodiesel fuel/petroleum diesel fuel blends.

## **COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS**

The Secretary has determined that this proposal does not impose a mandate on local agencies or school districts.

The Secretary also has determined that this action will involve no costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable costs or savings to local agencies or school districts under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, and no costs or savings in federal funding to the State.

### **EFFECT ON HOUSING COSTS**

The Department has made an initial determination that the proposed action will not affect housing costs.

### **SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

The Department has made an initial determination that the proposal will not have a statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

### **COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS**

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **ASSESSMENT REGARDING EFFECT ON JOB/BUSINESSES**

The Department has made an assessment that the proposed regulation may: (1) create jobs within California; (2) create new businesses within California; or (3) affect the expansion of businesses currently doing business in California; and (4) will not eliminate jobs or businesses within California.

### **ALTERNATIVES CONSIDERED**

The Secretary must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

### **AUTHORITY**

Pursuant to Business and Professions Code, Division 5, Sections 12027, 13440 and 13405.

## **REFERENCE**

The Department proposes to amend the current regulations to implement, interpret, and make specific the provisions of the Business and Professions Code, Sections 13401, 13440, 13450, 13480, and 13532.

## **CONTACT PERSON**

Inquiries about the notice may be directed to David Lazier, Branch Chief, Division of Measurement Standards at (916) 229-3044 or Al Hebert, Petroleum Products Chemist III, Division of Measurement Standards at (916) 229-3030.

Inquiries regarding the substance of the proposed regulatory action may be directed to David Lazier, Branch Chief, Division of Measurement Standards, at (916) 299-3044.

## **EFFECT ON SMALL BUSINESS**

The Department has made an assessment that the proposed regulations will affect small business. The impact is expected to be positive in that it will allow businesses to legally sell alternative engine fuels.

## **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Department has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the statement of reasons, and the proposed regulations in strikeout and underline form may be obtained upon request. The rulemaking file, and all information on which the proposal is based is located at the Division of Measurement Standards, 8500 Fruitridge Road, Sacramento, California 95826, and may be obtained upon request. Additionally, all documents relating to this rulemaking file may be obtained from the Department's web site located at [www.cdfa.ca.gov/dms/](http://www.cdfa.ca.gov/dms/).

Following the written comment period, the Department will adopt the proposal substantially as set forth above without further notice. If the regulations adopted by the Department differs from but is sufficiently related to the action proposed they will be available to the public for at least 15 days prior to the date of adoption. Any interested person may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer named herein.

A Final Statement of Reasons, when available, may be obtained by contacting David Lazier, Branch Chief, Division of Measurement Standards, at (916) 229-3044.

DEPARTMENT OF FOOD AND AGRICULTURE

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Date

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Secretary